

WASHINGTON POST
 NEW YORK TIMES 126
 WALL STREET JOURNAL
 WASHINGTON TIMES
 USA TODAY

DATE 28 JULY 88

STAT

THURSDAY, JULY 28, 1988

Letters

Extradition Policy Is Politics in Another Guise

To the Editor:

The problem of enforcing the normal criminal law against "terrorists" is simpler than appears to those quoted in "The Arm of American Law Turns Out to Be Not So Long" (Week in Review, July 3). The "political offense" exception to extradition obligations does not apply to a number of what are normally considered terrorist offenses in supervening treaty law, and those cases in which the exception has blocked extradition appear mainly to involve the kinds of acts soldiers perform, acts that in a military context are not crimes at all.

Indeed, many Americans are descended from the failed revolutionaries of 19th-century Europe, who were called criminal by the governments they sought to overthrow by "unauthorized" force; the Minutemen of Lexington and Concord were regarded as criminals by the British authorities of the time; John Paul Jones was called a pirate because the authority of the Continental Congress to issue his letters of marque was denied by the British.

The problem with the atrocious acts that foreign and American courts have held to be political (and thus not subject to extradition because part of a political struggle) appears to be a legal confusion by the executive branch, not the courts. Accepting the plea of the Puerto Rican "freedom fighter" William Morales, whose extradition to the United States was denied by Mexico, would not free him from legal accountability; it would subject him to the laws of war. Under the 1949 Geneva Conventions, target-

ing civilians could be "murder," requiring the state to which he fled to try him or extradite him.

As far as I can see, either Mr. Morales's acts were not such as to exceed what our own failed-revolutionary ancestors did before leaving their European struggles, or we never sought extradition except under the normal criminal law, which is not necessarily the law that applies for political risings. That we wish, for political reasons at home, to call Mr. Morales a common criminal does not bind him or Mexico to that categorization.

The obvious answer is to seek to have him extradited as either a common criminal or war criminal, at the discretion of the Mexican courts. Since both results are the same, he would be extradited without Mexico's having to determine which is the appropriate law, thus preserving "neutrality" in a question of legal labeling.

The same reasoning applies to the case of Mohammed Ali Hamadei, a Palestinian from Lebanon wanted in the 1985 hijack of a T.W.A. jetliner, except that West Germany is trying Mr. Hamadei as required by the 1970 Hague Convention on Aerial Hijacking and the 1949 Prisoners of War and Civilians Conventions that make a "grave breach" of the murder of the Navy diver Robert Stethem.

The only loophole would be cases in which courts hold the law of war inapplicable, though the offense is political in the sense of an extradition treaty, thus allowing a legal haven for a time for those who, were they soldiers, would be war criminals or "grave breachers" of one or another of the

1949 conventions. It is hard to see that result standing the test of experience or legislative attention.

The odd thing about all this is that the 1949 Geneva conventions and other multilateral treaties we are a party to that remove the political offense exception where there is an international consensus, like aerial hijacking, are not regarded by the Justice Department as treaties for setting the usual extradition procedures in motion. And our supplemental extradition treaty with Britain, which does trigger procedures and incorporates some of the multilateral treaties, has been used in the Joseph Doherty and Peter McMillen cases without reference to the multilateral treaties, apparently because under them neither of those men would be extraditable.

Thus, it appears that United States officials are really complaining that they cannot use extradition to ally us with a foreign government that calls its enemies "criminals" or, as in the Morales and Hamadei cases, exercise American jurisdiction over American political fanatics fleeing abroad or foreign fanatics who are being tried by a concerned government.

ALFRED P. RUBIN

Prof. of Intl. Law, Fletcher School
 of Law & Diplomacy, Tufts U.
 Medford, Mass., July 12, 1988